

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

IN RE:

Appeal of Condition No. 5 to the State Gas and Oil Director's Decision Entered May 9, 199[6] in the Case of Equitable Resources Energy Company's (herein "EREC") Application for a Permit for a Coalbed Methane Gas Well With Associated Gathering Pipeline (herein "Well VC-3043"), Application No. 2278, Permit No. 3101, Located in the Kenady District of Dickenson County, Virginia (herein "Director's Decision"), VGOB Docket No. 96-0618-0544

1. Hearing Date and Place: This cause came on for hearing before the Virginia Gas and Oil Board (herein "Board") at 9:00 a.m. on June 17, 1996, Ratliff Hall, Southwest Virginia 4-H Education Center, Abingdon, Virginia, pursuant to Va. Code § 45.1-361.36 upon the Petition for Appeal of the Director's Decision filed on May 16, 1996 in behalf of EREC.

2. Appearances: James E. Kaiser of Hunter, Smith & Davis and A. George Mason, Jr., General Counsel for EREC, appeared for EREC; and Sandra B. Riggs, Assistant Attorney General, was present to advise the Board.

3. Jurisdiction: Pursuant to Va. Code §§ 45.1-361.1 et. seq., the Board finds that it has jurisdiction over the subject matter.

4. Findings of Fact:

a. On or about March 18, 1996, the Department of Mines, Minerals and Energy, Division of Gas and Oil (herein "DMME") received from EREC an application for a new permit for Well VC -3043. Objections to the application for the permit for Well VC-3043 were filed with DMME by Alan Counts, Ms. Faye G. Counts, Ms. Sheila Peters, and Mr. Kester C. Romans, Jr., as heirs of the J.B.F. Counts Estate (herein collective "Objectors"), wherein, among other things, they challenged EREC's right to place Well VC-3043 upon the J.B.F. Counts tract (a/k/a J. B. Counts Farm) and EREC's rights to the minerals within said tract.

b. An informal fact finding hearing was held by the Director on April 25, 1996, pursuant to Va. Code § 45.1-361.35.G. (herein "IFFH 8596"). At the IFFH 8596, EREC and the Objectors/heirs of the J. B. F. Counts Estate appearing at the IFFH 8596 entered into a settlement agreement whereby the parties agreed that the Objectors would waive and withdraw their objections to EREC's Application for a Permit for Well VC-3043 in exchange for EREC's agreement to relocate the pipeline so that it was not upon the surface of the tract known as the J. B. Counts farm. The Objectors made it clear that the settlement of their objections to the permit application was not "in any way a waiv[er] of the surface owners right to go forward with any action that they may have as to the legal title of the minerals or gas and oil", nor did the Objectors waive "any future right that they may have to future proposals or permits that are requested."

c. Subject to the conditions set forth in a letter dated May 9, 199[6] from the Director of DMME's Division of Gas and Oil to EREC, Permit #3101 for operation VC-3043 w/pipeline was issued to EREC (herein said action is being referred to as the "Director's Decision"). Condition No. 5 of said Director's Decision provided that "Production from this well may not commence until a pooling order has been obtained from the Virginia Gas and Oil Board" (herein "Condition No. 5").

d. On May 16, 1996 EREC filed a Petition to Appeal Director's Decision pursuant to Va. Code § 45.1-361.23 in which EREC requests that the Board lift Condition No. 5 to the permit, and that EREC be allowed to produce Well VC-3043 without first obtaining a pooling order from the Board. The Petition for Appeal was filed on the following grounds:

1. That neither the Director nor the Board has jurisdiction to hear or decide title disputes or issues of properly ownership;
2. That it was not the intent of the General Assembly to include parties such as the objectors who were contesting title to the gas as claimants as that word is used in Va. Code § 45.1-361.22(A); and
3. That the Director and the Board are bound by EREC's title determinations as a prudent operator; however, if the Objectors desire to force a pooling of the drilling unit to be served by Well VC-3043, Va. Code § 45.1-361.22(A) places the burden on them, not on the permittee/operator, to file an application with the Board for the pooling of the unit.

5. Conclusions and Findings:

a. Neither the Director nor the Board has jurisdiction to hear or decide title disputes or issues of property ownership,

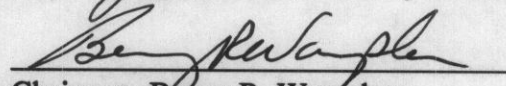
b. Va. Code §§ 45.1-361.1 et. seq., the Virginia Gas and Oil Act, do not define the term "claimant" as used in Va. Code § 45.1-361.22; however, the Board has in the past and continues to give that term liberal construction. Black's Law Dictionary defines a "claimant" as one who claims or asserts a right, demand or claim.

c. Va. Code § 45.1-361.22.A does not grant to the Director or to the Board the authority to initiate actions for the pooling of drilling units. Rather, said section states that "When there are conflicting claims to the ownership of coalbed methane gas, the Board, **upon application from any claimant**, shall enter an order pooling all interests or estates in the coalbed methane gas drilling unit for the development and operation thereof.

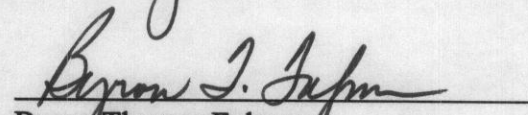
Therefore, the Board finds that while the Director cannot condition the issuance of Permit No. 3101 for Well VC-3043 upon EREC's filing of an application to the Board for the pooling of the drilling unit to be served by said well, any one of the Objectors may file with the Board an application for the pooling of said drilling unit pursuant to the requirements of Va. Code § 45.1-361.22 and the applicable portions of Va. Code §45.1-361.21.

The Board hereby grants to EREC the relief it seeks in its Petition for Appeal and deletes Condition No. 5 from the Director's Decision.

DONE AND EXECUTED this 27th day of June, 1996, by Order of this Board.

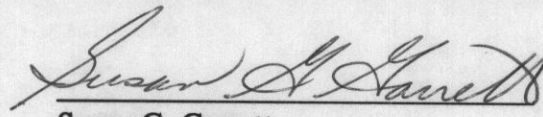

Chairman, Benny R. Wampler

DONE AND PERFORMED this 27th day of June, 1996, by a majority of the Virginia Gas and Oil Board.


Byron Thomas Fulmer
Principal Executive to the Staff
Virginia Gas and Oil Board

State of Virginia)
County of Wise)

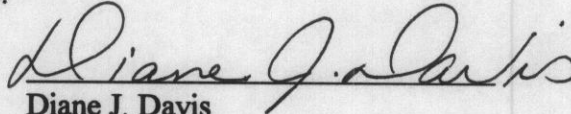
Acknowledged on this 27th day of June, 1996, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Susan G. Garrett
Notary Public

My commission expires: 07/31/98

State of Virginia)
County of Washington)

Acknowledged on this 27th day of June, 1996, personally before me a notary public in and for the Commonwealth of Virginia, appeared Byron Thomas Fulmer, being duly sworn did depose and say that he is Principal Executive to the Staff of the Virginia Gas and Oil Board, that he executed the same, and was authorized to do so.


Diane J. Davis
Notary Public

My commission expires: 09/30/97